IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4247 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DR. FALGUNI K SHAH

Versus

STATE OF GUJARAT

Appearance:

MR B.P TANNA, Sr. Advocate for
MR RK MISHRA for Petitioners
MR PR ABICHANDANI AGP for Respondent-State
MR AMIT M PANCHAL for Respondent No. 4
MR ANSHIN H DESAI for Respondent No. 5
MR MITUL K SHELAT for Respondent No. 6-7

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/04/2002

ORAL JUDGEMENT

Heard the learned advocates.

Learned advocate Mr. Tanna appearing for the petitioners states that pending this petition, the petitioners nos. 1,3 & 5 have resigned from service. He, therefore, seeks leave to delete the names of the petitioners nos. 1, 3 & 5 from the cause title of the petition. Leave is granted. The names of the petitioners nos. 1, 3 & 5 are permitted to be deleted from the cause title of the petition. The petitioners nos. 2 & 4 be renumbered as petitioners nos. 1 & 2 respectively.

The petitioners before this Court were appointed as Assistant Professors in B.J Medical College at Ahmedabad in the month of April, 2000. The petitioner no. 1 was appointed on 5th April, 2000 by the Commissioner of Health, Medical Services & Medical Education [Medical Education], subject to the terms and conditions contained therein. The relevant terms are :[a] her service being purely on ad hoc and temporary basis, is liable to be terminated at any time; [b] the Dean should verify the original certificates of the candidates before she is allowed to join her service. If any information supplied by the candidate in the application form is proved to be wrong, on verification of the original certificates, than the appointment order will be cancelled; [c] she should apply to the Gujarat Public Service Commission when the post is advertised by the Commission in future. If she fails to apply or fails to appear for interview or if she is not selected by the Commission, than her service is liable to be terminated forthwith. The petitioner no. 2 was appointed as an Assistant Professor in Paediatrics under order dated 20th April, 2000 made by the Dean, B.J Medical College, Ahmedabad, on purely ad hoc and temporary basis for a period of six months or till the post is filled in on regular basis or till further orders; whichever is earlier. That, she should apply to the Gujarat Public Service Commission when the post is advertised by the Commission in future. If she fails to apply or fails to appear in the interview or if she is not selected by the Commission than her service is liable to be terminated forthwith.

The service of both the petitioners was ordered to be terminated by the Commissioner, Health, Medical Education & Medical Services [Education], Gandhinagar under Order dated 16th June, 2001. Accordingly, by orders dated 16th June, 2001 made by the Dean, B.J Medical College, Ahmedabad, services of the petitioners are sought to be terminated. Feeling aggrieved, the petitioners have preferred the present petition. Pending

this petition, this Court [Coram : P.B Majmudar, J.] had on 18th June, 2001 ordered that, `in the meantime, the respondents are directed not to implement the impugned termination orders dated 16th June, 2001 till the returnable date and will allow the petitioners to continue in service.' The aforesaid direction continues till the date.

Mr. Tanna has submitted that the services of the petitioners has been terminated pursuant to the University derecognizing the petitioners as qualified teachers. He has further submitted that the petitioners' experience as Post Graduate student is equivalent to the experience earned by the residents. Mr. Tanna has submitted that the petitioners' appointment was made subject to the petitioners' applying for due selection by the Gujarat Public Service Commission and being selected by the said Commission. However, no such opportunity has been offered to the petitioners i.e., no advertisement has been published by the Gujarat Public Service Commission to make selection for appointment to the post of Assistant Professors in the Medical Colleges. Hence, the service of the petitioners cannot be terminated at a premature stage. He has further submitted that the Assistant Professors junior to the petitioners have been retained in service while the petitioners' service have been terminated. Mr. Tanna has submitted that the orders of termination of service of the petitioners are being justified on the ground that the petitioners did not possess requisite experience for being selected for appointment to the post of Assistant Professor in Medical College. He has submitted that the issue has been decided by this Court as far back as in the year 1986. He has relied upon the writ issued by this Court in Special Civil Application No. 689 of 1986, particularly the words, `the Court disposes of the petition as withdrawn and recommends to the four concerned Universities to grant Post Graduate registration as set out in the terms of settlement in the term commencing from January, 1986 to condone the deficiency in the attendance in the said term and to recognize experience of non-stipendary residents as teaching experience.' He has submitted that pursuant to the said recommendation made to the Universities, the respondents-authorities have considered the experience of non-stipendary residents to be the teaching experience, and accordingly, the same is recognized for the purpose of appointment on a teaching post. Mr. Tanna has also relied upon the certificate, time-tables, etc. produced at page nos. 31 to 47 in respect of the petitioner no. 2. He has submitted that for all practical purposes, the

petitioners were non-stipendary residents. The nature of duties performed by both were same as the residents. The experience of the petitioners as non-stipendary residents is required to be recognized as teaching experience for the purpose of selection and appointment to the post of Assistant Professor.

In answer to the notice issued by this Court, the respondents have appeared through the concerned learned advocates and have contested the petition. Reliance is placed on the recruitment rules for the post of Assistant Professors in the Medical Colleges and the Rules of Medical Council of India. The appointment to the post of Assistant Professor in GSS Class-I in the Government Medical Colleges and attached medical institutions are governed by the Professor, Associate Professor, Assistant Professor in GSS Class-I in the Government Medical Colleges & Attached Medical Institutions Recruitment Rules, 1992. Rule 3 thereof provides, inter alia that, `appointment to the post of Assistant Professor Class-I shall be made by promotion or by direct selection.' Rule 4 thereof provides for eligibility for appointment by direct selection. For being eligible for appointment as Assistant Professor, a candidate is required to have a Post Graduate Degree in the concerned subject and teaching experience of three years as a Tutor/Resident/Registrar in a Medical College. Pursuant to the rules made by the Medical Council of India, the Gujarat University has on 1st May, 1999 passed a Resolution to adopt the norms set by the Medical Council of India for appointment to the posts of teachers in the Medical Colleges.

It is a common ground that for appointment to a teaching post in a medical college, one is required to have three years' teaching experience in the concerned subject in a recognized medical college as a Resident/ Registrar/Administrator/Tutor. The only ground on which the petitioners are non-suited for a teaching post is that they do not possess the requisite teaching experience. The question that falls for consideration is whether while undergoing their post graduate studies, the petitioners can be said to have acquired the requisite teaching experience. Be it noted that though it is vehemently argued that petitioners were appointed as non-stipendary residents, no certificate to that effect has been produced on the records of the matter. The respondents-authorities have maintained that petitioners were never appointed as residents but were mere post-graduate students. The University in its affidavit has pointed out that appointment as residents is not the

same as admission to a Post Graduate course. The residents are supposed to perform functions and duties as prescribed under the relevant rules. While, the post graduate students are not supposed to perform such duties but to prosecute their post graduate studies. Hence, the post graduate student cannot be equated with that of a post graduate resident for the purpose of determining whether the post graduate students can be said to have gained teaching experience. It is categorically stated that a post graduate student is not required to take lectures as the resident does. The post graduate students, therefore, do not gain teaching experience while prosecuting their studies.

As recorded hereinabove, the petitioners have failed to produce any document in support of their contention that they were admitted as non-stipendary residents. In absence of such evidence, the say of the petitioners cannot be believed nor can reliance be placed on the certificates annexed to the petition at page nos. 32 to 47. The writ of this Court relied upon by the petitioners records the recommendation made by this Court. No specific direction has been issued in this regards. Moreover, the Universities are supposed to follow the rules framed by the Medical Council of India. Admittedly, neither of the petitioners was ever appointed as the Registrar/Resident/Tutor/Administrator in a recognized medical college. Hence, the petitioners cannot be said to have gained requisite teaching experience. The respondent-University also has made orders de-recognizing the recognition of the petitioners as teacher in a medical College. The order of the University is not the subject matter of challenge in the present petition.

Thus, the petitioners on the date of their appointment did not possess the requisite qualification for being appointed as Assistant Professors in medical college. In my view, therefore, the order of termination of their services is lawful and is in consonance with the relevant rules. Since the petitioners are held to be not eligible for appointment to the post of Assistant Professor, the question of their seniority vis-a-vis other Assistant Professors does not arise. The other Assistant Professors who may be junior to the petitioners, if otherwise qualified, may be retained in service, while the petitioners' services are terminated. In any view of the matter, the petitioners' appointment was terminable at any time without notice. I am, therefore, of the view that neither of the petitioners

has a legitimate cause of grievance. The petition is, therefore, dismissed in limine. Notice is discharged. Ad-interim relief is vacated.

Learned advocate Mr. Mishra requests that the ad-interim relief be continued for a period of two weeks. Since the petitioners have been held to be ineligible for appointment to the post of Assistant Professor, the ad-interim relief cannot be continued. Hence, the request is rejected.

[Miss R.M Doshit, J.]

Prakash*